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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/583,310	05/30/2000	John R. Cashman	16663-000120US	5075

20350 7590 11/05/2002

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EIGHTH FLOOR
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EXAMINER
STEADMAN, DAVID J

ART UNIT	PAPER NUMBER
1652	

DATE MAILED: 11/05/2002

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/583,310	CASHMAN ET AL.
	Examiner	Art Unit
	David J. Steadman	1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 September 2002.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 4,5 and 37-39 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 4 is/are allowed.

6) Claim(s) 5 and 37-39 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) Other: *sequence comparison* .

DETAILED ACTION***Application Status***

Claims 4, 5, and 37-39 are pending in the application.

Cancellation of claim 3 and amendment to the specification and claims 4, 5, and 37-39 in Paper No. 12, filed 09/03/02, is acknowledged.

Applicants' arguments presented in Paper No. 12 have been fully considered and are deemed to be persuasive to overcome some of the rejections previously applied. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn.

The text of those sections of Title 35 U.S. Code not included in the instant action can be found in a prior Office action.

Claim Objections

1. Claim 37 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. The polynucleotide of SEQ ID NO:5 encodes the polypeptide sequence of SEQ ID NO:6 (see the nucleotide sequence of SEQ ID NO:5 and the amino acid sequence of SEQ ID NO:6 in the sequence listing paper copy). As such, the limitation of encoding the amino acid sequence of SEQ ID NO:6 as recited in claim 6 does not further limit claim 4. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim Rejections - 35 USC § 112, Second Paragraph

2. Claims 5, 38, and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 5 is indefinite in the recitation of "DNA sequences according to claim 4". Claim 4 is drawn to a single DNA sequence and not a plurality of DNA sequences. As such, it is unclear as to the intended

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scope of DNA sequences contained in the claimed host cell of claim 5. It is suggested that applicants clarify the meaning of the claim.

4. Claim 38 is confusing as the nucleotide sequence of SEQ ID NO:7 is not identical to SEQ ID NO:5 (see attached sequence comparison) and therefore, it is unclear as to how the nucleic acid of claim 4 can be SEQ ID NO:7. A single nucleic acid cannot have two different nucleotide sequences simultaneously. It is suggested that applicants clarify the meaning of the claim.

5. Claim 39 is confusing as the nucleic acid of SEQ ID NO:5 does not encode the polypeptide sequence of SEQ ID NO:8 (see attached sequence comparison). The polypeptide sequence of SEQ ID NO:8 is encoded by SEQ ID NO:7. Therefore, it is unclear as to how the nucleic acid of SEQ ID NO:5 can encode the polypeptide of SEQ ID NO:8. It is suggested that applicants clarify the meaning of the claim.

Claim Rejections - 35 USC § 102

6. In view of applicants' cancellation of claim 3, the rejection under 35 U.S.C. 102(b) as being anticipated by Dolphin et al. (IDS reference AA; EMBL Accession Number Z47552, 12 January, 1995) is withdrawn. While Dolphin et al. teach a nucleic acid that is 99.5 % identical to SEQ ID NO:5 and encodes an FMOS, Dolphin et al. do not teach or suggest a polynucleotide having the sequence of SEQ ID NO:5 or SEQ ID NO:7 and the examiner can find no teaching in the prior art of record to alter the sequence of Dolphin et al. to the sequence of SEQ ID NO:5.

Claim Rejections - 35 USC § 103

7. In view of applicants' cancellation of claim 3, the rejection of claim 5 under 35 U.S.C. 103(a) as being unpatentable over Dolphin in view of Sambrook (*Molecular Cloning*, 2nd Edition, 1989, Cold Spring Harbor Laboratory Press, 17.10-17.27) is withdrawn as Dolphin et al. do not teach or suggest all limitations of claim 5 as described above.

Conclusion

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8. Claim 4 appears to be in a condition for allowance.
9. Claims 5 and 37-39 would be allowable if rewritten to overcome the objection(s) and/or rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Steadman, whose telephone number is (703) 308-3934. The Examiner can normally be reached Monday-Thursday from 6:30 am to 5:00 pm. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Ponnathapura Achutamurthy, can be reached at (703) 308-3804. The FAX number for this Group is (703) 308-4242. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Art Unit receptionist whose telephone number is (703) 308-0196.

David J. Steadman, Ph.D.
Patent Examiner
Art Unit 1652



REBECCA E. PROUTY
PRIMARY EXAMINER
GROUP 1800
1652

US-09-583-310-5 (1-1599)

US-09-583-310-6 Sequence 6, Application US/09583310

Initial Score = 533 Optimized Score = 533 Significance = 1.41
Residue Identity = 100% Matches = 532 Mismatches = 0
Gaps = 0 Conservative Substitutions = 0
Translation Frame= 1

X	10	20	30	40	50	60	70
MGKKVIAIGAGVSGLASIRSCLEEGLEPTCFEKSNDIGGLWKFSDHAEGRASIYKSVFSNSSKEMMCFPDF							
MGKKVIAIGAGVSGLASIRSCLEEGLEPTCFEKSNDIGGLWKFSDHAEGRASIYKSVFSNSSKEMMCFPDF							
X	10	20	30	40	50	60	70
80 90 100 110 120 130 140							
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PFPDDFPNFMHNSKIQEYIIIAFAKEKNLLKYIQFKTFVSSVNKHPDFATTGQWVDTTERDGKKEAVFDAM							
80 90 100 110 120 130 140							
150 160 170 180 190 200 210							
VCSGHVVYPNLPKKSFPGLNHFKGKCFHSRDYKEPGVFNKGKRVLVVGLGNSGCDIATELSRTAEQVMISSRS							
VCSGHVVYPNLPKKSFPGLNHFKGKCFHSRDYKEPGVFNKGKRVLVVGLGNSGCDIATELSRTAEQVMISSRS							
150 160 170 180 190 200 210							
220 230 240 250 260 270 280							
GSWVMSRVWDNGYPWDMLLVTRFGTFLKNNLPTAISDWLYVKQMNARFKHENYGLMPLNGVLRKEPVFNDEL							
GSWVMSRVWDNGYPWDMLLVTRFGTFLKNNLPTAISDWLYVKQMNARFKHENYGLMPLNGVLRKEPVFNDEL							
220 230 240 250 260 270 280							
290 300 310 320 330 340 350 360							
PASILCGIVSVKPNVKEFTETSAIFEDGTIFEGIDCVIFATGYSFAYPFLDESIIKSRNNEIILFKGVFPPL							
PASILCGIVSVKPNVKEFTETSAIFEDGTIFEGIDCVIFATGYSFAYPFLDESIIKSRNNEIILFKGVFPPL							
290 300 310 320 330 340 350 360							
370 380 390 400 410 420 430							
LEKSTIAVIGFVQSLGAAIPVDLQSRWAAQVIKGCTLPSMEDMMNDINEKMEKKRKWFGKSETIQTDYIV							
LEKSTIAVIGFVQSLGAAIPVDLQSRWAAQVIKGCTLPSMEDMMNDINEKMEKKRKWFGKSETIQTDYIV							
370 380 390 400 410 420 430							
440 450 460 470 480 490 500							
YMDELSSFIGAKPNIPWLFLTDPKLAMEVYFGPCSPYQFRLVGPQWPGARNAILTQWDRSLKPMQTRVVGR							
YMDELSSFIGAKPNIPWLFLTDPKLAMEVYFGPCSPYQFRLVGPQWPGARNAILTQWDRSLKPMQTRVVGR							
440 450 460 470 480 490 500							
510 520 530 X							
LQKPCFFFHWLKLFAIPILLIAVFLVLTX							
LQKPCFFFHWLKLFAIPILLIAVFLVLTX							
510 520 530 X							

SEQ ID NO: 5 ENCODES SEQ ID NO: 6

SEQ ID NO: 5 IS NOT IDENTICAL TO

US-09-583-310-5 (1-1599)

US-09-583-310-7 Sequence 7, Application US/09583310

Initial Score = 1598 Optimized Score = 1598 Significance = 0.00
Residue Identity = 99% Matches = 1598 Mismatches = 1
Gaps = 0 Conservative Substitutions = 0

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ATGGGGAAAGAAAGTGGCCATCATTGGAGCTGGTGTGAGTGGCTTGGCCTCCATCAGGAGCTGTCAGAG
|||||||
ATGGGGAAAGAAAGTGGCCATCATTGGAGCTGGTGTGAGTGGCTTGGCCTCCATCAGGAGCTGTCAGAG
X 10 20 30 40 50 60 70
80 90 100 110 120 130 140
GGGCTGGAGGCCACCTGCTTGAGAAGAGCAATGACATTGGGGCCGTGGAAATTTCAGACCATGCAGAG
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GGGCTGGAGGCCACCTGCTTGAGAAGAGCAATGACATTGGGGCCGTGGAAATTTCAGACCATGCAGAG
80 90 100 110 120 130 140
150 160 170 180 190 200 210
GAGGGCAGGGCTAGCATTACAATCAGTCTTCCAATCTCCAAGAGATGATGTTCCAGACTTC
|||||||
GAGGGCAGGGCTAGCATTACAATCAGTCTTCCAATCTCCAAGAGATGATGTTCCAGACTTC
150 160 170 180 190 200 210
220 230 240 250 260 270 280
CCATTTCCGATGACTTCCCCAACTTTATGCACAAACAGCAAGATCCAGGAATATATCATTGCATTGCCAA
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220 230 240 250 260 270 280
290 300 310 320 330 340 350 360
GAAAAGAACCTCCTGAAGTACATACAATTAAAGACATTGTATCCAGTGTAAATAAACATCCTGATTTGCA
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290 300 310 320 330 340 350 360
370 380 390 400 410 420 430
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370 380 390 400 410 420 430
440 450 460 470 480 490 500
GTTTGTTCGGACATCATGTGTATCCAAACCTACCAAAAGTCCTTCCAGGACTAAACCACTTTAAAGGC
|||||||
GTTTGTTCGGACATCATGTGTATCCAAACCTACCAAAAGTCCTTCCAGGACTAAACCACTTTAAAGGC
440 450 460 470 480 490 500
510 520 530 540 550 560 570
AAATGCTTCACAGCAGGGACTATAAGAACCCAGGTGTATTCAATGGAAAGCGTGTCTGGTGGTGGCCTG
|||||||
AAATGCTTCACAGCAGGGACTATAAGAACCCAGGTGTATTCAATGGAAAGCGTGTCTGGTGGTGGCCTG
510 520 530 540 550 560 570
580 590 600 610 620 630 640
GGGAATTCGGGCTGTGATATTGCCACAGAACTCAGCCGACAGCAGAACAGGTGATGATCAGTCCAGAAGT
|||||||
GGGAATTCGGGCTGTGATATTGCCACAGAACTCAGCCGACAGCAGAACAGGTGATGATCAGTCCAGAAGT
580 590 600 610 620 630 640
650 660 670 680 690 700 710 720
GGCTCCTGGGTGATGAGCCGGTCTGGGACAATGGTTATCCTGGGACATGCTGCTCGTCACTCGATTTGGA
|||||||
GGCTCCTGGGTGATGAGCCGGTCTGGGACAATGGTTATCCTGGGACATGCTGCTCGTCACTCGATTTGGA
650 660 670 680 690 700 710 720
730 740 750 760 770 780 790
ACCTTCCTCAAGAACAAATTACCGACAGCCATCTGACTGGTTGACGTGAAGCAGATGAATGCAAGATT
|||||||
ACCTTCCTCAAGAACAAATTACCGACAGCCATCTGACTGGTTGACGTGAAGCAGATGAATGCAAGATT

730 740 750 760 770 780 790
 800 810 820 830 840 850 860
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 ||||| ||||| ||||| ||||| ||||| |||||
 AAGCATGAAA ACTATGGCTT GATGCCTT AAATGGAGT CCTGAGGAA AGAGCCTG TATTTAACGATGAGCTC
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 870 880 890 900 910 920 930
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 CCAGCAAGCATTCTGTGTGGCATTGTGTCCGTAAGCCTAACGTGAAGGAATTACAGAGACCTCGGCCATT
 870 880 890 900 910 920 930
 940 950 960 970 980 990 1000
 TTTGAGGATGGGACCATATTGAGGGCATTGACTGTGTAATCTTGCAACAGGGTATAGTTTGCTACCCC
 ||||| ||||| ||||| ||||| |||||
 TTTGAGGATGGGACCATATTGAGGGCATTGACTGTGTAATCTTGCAACAGGGTATAGTTTGCTACCCC
 940 950 960 970 980 990 1000
 1010 1020 1030 1040 1050 1060 1070 1080
 TTCCCTGATGAGTCTATCATCAAAGCAGAACAAATGAGATCATTAAAGGAGTATTCCCTCCTCTA
 ||||| ||||| ||||| ||||| |||||
 TTCCCTGATGAGTCTATCATCAAAGCAGAACAAATGAGATCATTAAAGGAGTATTCCCTCCTCTA
 1010 1020 1030 1040 1050 1060 1070 1080
 1090 1100 1110 1120 1130 1140 1150
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 ||||| ||||| ||||| |||||
 CTTGAGAAGTCACCATAGCAGTGATTGGCTTGCCAGTCCCTGGGCTGCCATTCCACAGTTGACCTC
 1090 1100 1110 1120 1130 1140 1150
 1160 1170 1180 1190 1200 1210 1220
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 ||||| ||||| ||||| ||||| |||||
 CAGTCCCGCTGGGCAGCACAAAGTAATAAGGGAACTTGTACTTTGCCCTCTATGGAAGACATGATGAATGAT
 1160 1170 1180 1190 1200 1210 1220
 1230 1240 1250 1260 1270 1280 1290
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 ATTAATGAGAAAATGGAGAAAAGCGCAAATGGTTGGCAAAGCGAGACCATACAGACAGATTACATTGTT
 1230 1240 1250 1260 1270 1280 1290
 1300 1310 1320 1330 1340 1350 1360
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 TATATGGATGAACTCTCCCTT CATTGGGCAAAGCCCAACATCCCAGTGGCTGTTCTCACAGATCCCAA
 1300 1310 1320 1330 1340 1350 1360
 1370 1380 1390 1400 1410 1420 1430 1440
 TTGGCCATGGAAGTTATTTGGCCCTTGTAGTCCCTACCAAGTTAGGCTGGTGGGCCAGGGCAGTGGCCA
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 TTGGCCATGGAAGTTATTTGGCCCTTGTAGTCCCTACCAAGTTAGGCTGGTGGGCCAGGGCAGTGGCCA
 1370 1380 1390 1400 1410 1420 1430 1440
 1450 1460 1470 1480 1490 1500 1510
 GGAGCCAGAAATGCCATACTGACCCAGTGGGACCGGCTGTTGAAACCCATGCAGACACAGAGTGGTCGGGAGA
 ||||| ||||| ||||| |||||
 GGAGCCAGAAATGCCATACTGACCCAGTGGGACCGGCTGTTGAAACCCATGCAGACACAGAGTGGTCGGGAGA
 1450 1460 1470 1480 1490 1500 1510
 1520 1530 1540 1550 1560 1570 1580
 CTTCAGAAGCCTGCTTCTTTCCATTGGCTGAAGCTCTTGCAATTCTATCTGTTAACCGCTGTTTC
 ||||| ||||| ||||| |||||
 CTTCAGAAGCCTGCTTCTTTCCATTGGCTGAAGCTCTTGCAATTCTATCTGTTAACCGCTGTTTC
 1520 1530 1540 1550 1560 1570 1580
 1590 X
 CTTGTGTTGACCTAA
 ||||| |||||

CTTGTGTTGACCTAA
1590 X

US-09-583-310-5 (1-1599)

US-09-583-310-8 Sequence 8, Application US/09583310

Initial Score = 532 Optimized Score = 532 Significance = 0.00
Residue Identity = 99% Matches = 531 Mismatches = 1
Gaps = 0 Conservative Substitutions = 0
Translation Frame= 1

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MGKKVAIIGAGVSGLASIRSCLEEGLEPTCFEKSNDIGGLWKFSDHAEGRASIYKSVFSNSSKEMMCFPDF
|||||||
MGKKVAIIGAGVSGLASIRSCLEEGLEPTCFEKSNDIGGLWKFSDHAEGRASIYKSVFSNSSKEMMCFPDF
X 10 20 30 40 50 60 70

80 90 100 110 120 130 140
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PPFPDDFPNFMHNSKIQEYIIAFAKEKNLLKYIQFKTFVSSVNKHPDFATTGQWVDVTTERDGKKEAVFDAM
80 90 100 110 120 130 140

150 160 170 180 190 200 210
VCSGHHVYPNLPKNSFPGLNHFKGKCFHSRDYKEPGVFNKGKVLVVGLGNSGCDIATELSRTAEQVMISSRS
|||||||
VCSGHHVYPNLPKNSFPGLNHFKGKCFHSRDYKEPGVFNKGKVLVVGLGNSGCDIATELSRTAEQVMISSRS
150 160 170 180 190 200 210

220 230 240 250 260 270 280
GSWVMSRVWDNGYPWDMLLVTRFGTFLKNNLPTAISDWLYVKQMNARFKHENYGLMPLNGVLRKEPVFNDEL
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220 230 240 250 260 270 280

290 300 310 320 330 340 350 360
PASILCGIVSVKPNVKEFTETSAIFEDGTIFEGIDCVIFATGYSFAYPFLDESIKSRNNEIILFKGVFPPL
|||||||
PASILCGIVSVKPNVKEFTETSAIFEDGTIFEGIDCVIFATGYSFAYPFLDESIKSRNNEIILFKGVFPPL
290 300 310 320 330 340 350 360

370 380 390 400 410 420 430
LEKSTIAVIGFVQSLGAAIPVDLQSRWAAQVIKGCTLPSMEDMMNDINEKMEKKRKWFGKSETIQTDYIV
|||||||
LEKSTIAVIGFVQSLGAAIPVDLQSRWAAQVIKGCTLPSMEDMMNDINEKMEKKRKWFGKSETIQTDYIV
370 380 390 400 410 420 430

440 450 460 470 480 490 500
YMDELSSFIGAKPNIPWLFLTDPLKLMEVYFGPCSPYQFRLVPGPGQWPGARNAILTQWDRSLKPMQTRVVGR
|||||||
YMDELSSFIGAKPNIPWLFLTDPLKLMEVYFGPCSPYQFRLVPGPGQWPGARNAILTQWDRSLKPMQTRVVGR
440 450 460 470 480 490 500

510 520 530 X
LQKPCFFFHWLKLFAIPILLIAVFLVLT
|||||||
LQKPCFFFHWLKLFAIPILLIAVFLVLT
510 520 530 X

SEQ ID NO: 5 ^{81-2?}

ENCODES A POLYPEPTIDE THAT IS NOT IDENTICAL
TO SEQ ID NO: 8